

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

-vs-

15-CR-2

JASON M. SMITH,

Defendant.

Proceedings held before the
Honorable William M. Skretny, Buffalo
Courtroom, Robert H. Jackson Courthouse,
2 Niagara Square, Buffalo, New York, on
March 10, 2016.

APPEARANCES:

SCOTT ALLEN,
Assistant United States Attorney,
Appearing for the United States.

THOMAS J. EOANNOU, ESQ.,
Appearing for Defendant.

Michelle L. McLaughlin, RPR,
Official Reporter,
U.S.D.C. W.D.N.Y.

1 MR. ALLEN: Morning, Judge.

2 MR. EOANNOU: Morning, Judge.

3 THE COURT: Mr. Eoannou, good morning.

4 Mr. Allen, good morning.

5 You want to call the case, please, Miss

6 Labuzzetta?

7 THE CLERK: Criminal case 15-2S, United

8 States of America versus Jason Smith.

9 THE COURT: Okay. Mr. Smith, I think, is
10 at the table. Good morning.

11 THE DEFENDANT: Morning, your Honor.

12 THE COURT: Let's get an update. I
13 accepted the R and R in this case back in January
14 denying the motion to suppress. And so we need to
15 discuss what we're going to do by way of plea
16 discussions and is that going to result in a plea,
17 or do we have a trial that we have to set a date
18 for?

19 MR. EOANNOU: Judge, when we were last
20 here we had a plea offer that needed to be
21 finalized. We checked with the United States
22 Department of Probation. They disagreed with us by
23 five levels, which takes my client to a 43 I
24 believe in the federal sentencing guidelines. I've
25 then gone back, and Mr. Allen, I have to say, has

1 been most kind. We have negotiated back and forth,
2 and I'm trying to negotiate another plea which
3 would preserve my client's right to appeal and
4 argue outside the guideline range, which I think
5 we're fine with.

6 My client has also directed me to follow up on
7 a couple of subpoenas that we believe were issued
8 by the state system, and we're in the process of
9 doing that. I've spoken to Mr. Allen no less than
10 three times in the last week about this.

11 THE COURT: So what do we need to do here?
12 You need more time?

13 MR. EOANNOU: We need more time, Judge, to
14 see if the United States Attorney's office will
15 agree to our counter proposal.

16 THE COURT: Is that a plea agreement
17 preserving the right to appeal --

18 MR. EOANNOU: Yes.

19 THE COURT: -- is that part of the
20 negotiations?

21 MR. EOANNOU: And argue outside the
22 guideline range.

23 THE COURT: Okay. All right. Mr. Allen,
24 that works from your standpoint?

25 MR. ALLEN: Yes, your Honor.

1 THE COURT: All right. How much time do
2 you think we really need?

3 MR. ALLEN: Your Honor, I could get the
4 plea drafted in very short order. I think the real
5 issue is how long Mr. Eoannou needs with respect to
6 his other issues he wants to investigate as it
7 relates to the subpoenas he mentioned, things of
8 that nature.

9 MR. EOANNOU: That is correct, Judge.
10 This, as the Court will recall, started as a state
11 investigation. In our discovery packet and going
12 through it with the Meetme.com Web site, we do not
13 see a subpoena for that data, and it appears that
14 that's what was part of the search warrant
15 application process. So my client has now asked me
16 to go back and see how that information from
17 Meetme.com was obtained.

18 I communicated that to Mr. Allen and, again,
19 he's been wonderful and said he would assist me in
20 looking into that. My client says he cannot make a
21 decision until such time until he sees that, and I
22 can certainly appreciate it in light of the
23 guideline range.

24 THE COURT: Is that a possible basis for a
25 motion to suppress, is that what we're talking

1 about?

2 MR. EOANNOU: I'm not sure at this point,
3 Judge, because I don't know how they obtained it.
4 I know it's certainly worth looking into.

5 THE COURT: Okay. So, how much time do we
6 need?

7 MR. EOANNOU: One last 60 days, and if we
8 get it, Judge, we will be moving up the plea date.
9 I anticipate we're going to work this out.

10 THE COURT: Let's set it 60 days out for a
11 plea.

12 THE CLERK: Judge, but this time I locked
13 out the time, and they didn't let me know that it
14 wasn't going to plea like I inquired. Can you set
15 a deadline to let me know if it's not going to be a
16 plea? That's the problem.

17 THE COURT: Okay. Set it out 60 days, and
18 let us know two weeks beforehand.

19 THE CLERK: Mr. Eoannou has to be here at
20 2:00 on May 18th on Chris Sanchez.

21 MR. EOANNOU: Yes.

22 THE CLERK: So how about 2:30?

23 MR. EOANNOU: That would be fine. Thank
24 you.

25 MR. ALLEN: Thank you.

1 THE COURT: All right. Mr. Allen --

2 MR. ALLEN: Yes, your Honor.

3 THE COURT: -- time to be excluded?

4 MR. ALLEN: Yes, your Honor. The
5 government moves to exclude the time between today
6 up to and including May 18th, 2016, pursuant to
7 Title 18, United States Code, 3161(h)(7)(A) and
8 (h)(7)(B)(iv) in that it is the government's
9 position, your Honor, that the ends of justice
10 served by taking such action outweigh the best
11 interest of the public and the defendant in a
12 speedy trial, because with this time, the
13 defendant's counsel can investigate the subpoena
14 issue and plea negotiations can take place and the
15 defendant can receive effective assistance of
16 counsel, your Honor.

17 THE COURT: Okay. No objection?

18 MR. EOANNOU: No, Judge.

19 THE COURT: For the specific reasons
20 stated, they are adopted, and the exclusions will
21 be pursuant to both sections.

22 MR. EOANNOU: Thank you.

23 THE COURT: And we'll see everybody back
24 here in -- what's the specific date again?

25 MR. EOANNOU: May 18th.

1 THE CLERK: May 18th.

2 THE COURT: At 2:00 and 2:30.

3 THE CLERK: 2:30, Judge.

4 THE COURT: Okay. Thank you very much.

5 MR. ALLEN: Thank you, Judge.

6 THE DEFENDANT: Thank you, your Honor.

7 Thank you, Mr. Allen.

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CERTIFICATION

I certify that the foregoing is a
correct transcription of the proceedings
recorded by me in this matter.

s/Michelle L. McLaughlin
Michelle L. McLaughlin, RPR
Official Reporter
U.S.D.C., W.D.N.Y.